IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 9787 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SOMABHAI RAMJIBHAI CHOHANA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 9787 of 2003

MR RA MISHRA for Petitioner No. 1

Mr.K.C.Shah, Addl.PUBLIC PROSECUTOR for Respondent No. 1

MS DR KACHHAVAH for Respondent No. 2-5

Ms.D.R. KACHHAVAH for Respondent No. 2-5

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 19/12/2003

ORAL JUDGEMENT

Rule. Mr.K.C.Shah, Ld.APP for respondent No.1-State and Ms.Kachhavah for respondent Nos 2 to 5 waives service of notice respectively.

2. Having heard Mr.Mishra, for petitioner, Mr.K.C.Shah, Ld.APP and Ms.Kachhavah for respondents, the only question arises for consideration of this court is that when the apprehension is shown by the complainants that they are going to be assaulted or any damage is likely to be caused to the prosecution case, the State should provide adequate police protection to the complainants and the witnesses or not.

3. As such, no detailed discussion is required and it is not only well settled but it is the basic duty of the State to ensure that the complainants and the witnesses are provided adequate protection in such a manner that they can depose truth before the court in a free and fair atmosphere.

4. Mr.Mishra for the petitioner contended that there is valid basis for demanding police protection which was applied but the learned Magistrate declined. On the other side, Ms.Kachhavah submitted that there is no objection if the police protection is provided. Since the matter is pertaining to offence under section 498A Cr.P.C., the complainant and some witnesses are coming from Ahmedabad, with a view to see that fair trial is assured and the complainant and witnesses can depose in a free and fair atmosphere, I find that the State should provide police protection to the complainant and the witnesses as and when demanded. The Ld.Public Prosecutor could no show any law which absolves the State from the responsibility of providing such protection to the complainants and witnesses. He only states that there is no sufficient material. In my view, considering the peculiar facts and circumstances of the case, if the protection is given to the complainant and the witnesses at the time of deposition for recording of evidence in the court, same would meet with the ends of justice.

5. In view of the aforesaid discussion, petition is allowed to the extent that as and when the police protection is demanded by the complainant himself or for witnesses on the side of the complainant to the Police Inspector, Gondal City Police Station, the Police Station in-charge shall ensure to see that the police protection is provided to the complainant and the witnesses, as the case may be, from the ST bus-stand to the court premises and while returning from the court premises to the ST

bus-stand.

6. Petition is disposed of in terms of aforesaid directions and the rule is made absolute to the aforesaid extent.

19.12.2003 (JAYANT PATEL,J)